FairPoint Rate-of-Return ICC Transition Funding

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Transition Funding & FairPoint Rate-of-Return LECs

CAF II ROFR was declined	CAF II ROFR was accepted and model-based support is greater than frozen	CAF II ROFR was accepted and model-based support is less than frozen
Colorado Kansas	Illinois Maine Massachusetts New Hampshire Vermont Virginia	Alabama Florida Missouri New York Ohio Oklahoma Pennsylvania Washington

FairPoint Eligible Recovery

- FairPoint rate-of-return carriers are entitled to recover Eligible Recovery pursuant to Section 51.917.
  - 51.917(d) *Eligible Recovery for Rate-of-Return Carriers.* (1) Notwithstanding any other provision of the Commission's rules, a Rate-of-Return Carrier may recover the amounts specified in this paragraph through the mechanisms described in paragraphs (e) and (f) of this section.

FairPoint LSS Duplicate Funding

- Section 51.917 prohibits duplicate recovery of costs or revenue:
  - 51.917(d)(vii) If a Rate-of-Return Carrier recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery. Any duplicative recovery shall be reflected as a reduction to a carrier's Eligible Recovery calculated pursuant to §51.917(d).

Local Switching Support is Already in Eligible Support

- LSS is, and has always been, included in FairPoint's Eligible Recovery. See NECA annual tariff filings starting in 2012.
- During CAF Phase I, FairPoint rate-of-return carriers were treated under price cap rules and received CAF Phase I Frozen Support that included LSS.
- To avoid Duplicate Recovery, NECA subtracted the CAF Phase I Frozen LSS from FairPoint's Eligible Recovery.

Eligible Recovery Under CAF II Funding

- Effective January 1, 2015, FairPoint no longer received CAF Phase I Frozen Support in all but two study areas.
- FairPoint contacted NECA to let them know the company accepted the ROFR in all but two states, and NECA accordingly should discontinue subtracting Frozen LSS from FairPoint's Eligible Recovery.
- NECA agreed; however, when it met with the FCC Staff NECA was instructed not to make the filings; thus, NECA continues to subtract Frozen Support from FairPoint's Eligible Recovery.

The Real Question

- The real question is not whether FairPoint should include LSS in its Eligible Recovery.
- LSS is included in FairPoint's Eligible Recovery and has been from the start, as provided in the rules.
- The real question is whether NECA should keep subtracting CAF Phase I Frozen LSS amounts under the rule barring "duplicate recovery" when there is, in fact, no duplicate recovery.

Granting the Petition Advances FCC Policy

- FairPoint is a rate-of-return carrier,
- All other rate-of-return carriers receive full Eligible Recovery, with no reduction for LSS-related amounts frozen into the Base Period Eligible Recovery amount.
- Rate-of-return carriers electing A-CAM will be in a position virtually identical to that of FairPoint: They will receive A-CAM Support and remain under rate-of-return rules for Traffic Sensitive operations. Their BPER will not change. A-CAM model support has never been deemed to include duplicative LSS amounts.
- Reducing FairPoint's Eligible Recovery by considering a portion of its CAF II funding as "duplicate LSS" leaves FairPoint short of critical funding needed to fulfill its CAF II obligations. In some states, more LSS is being subtracted than the entire CAF II funding.

Model Support is Not Duplicate LSS

- LSS represents an amount of local switching costs assigned to the interstate jurisdiction by Part 36 rules. No such mechanism exists in CAF II Connect America Model-based support.
- Even assuming that switching costs included in the Connect America Model-based support represent “duplicate” LSS funding, the amounts of switching costs included in the model are relatively small.

Failure to Act on Pending Petitions Will Lead to Reductions In Network Investment

- The petition has been pending since December 2015, when FairPoint was able to calculate the full impact of NECA's unlawful withholding of LSS-related amounts beginning as of January 1, 2015.
- Reduced LSS recovery costs FairPoint roughly $4.2 million <u>per year</u>
- Even assuming, *arguendo*, that there is some amount of switching-related costs in the model-based support, FairPoint estimates that to be no more than $62,000 per year for all FairPoint rate-of-return study areas.

Summary

- The FCC is obligated to enforce its rules as written.
- FairPoint is entitled to its Eligible Recovery "notwithstanding any other provisions of the Commission's rules."
- There is no support in the rules for continuing to subtract CAF Phase I Frozen LSS from FairPoint's Eligible Recovery since it no longer receives CAF Phase I Frozen Support.
- Loss of revenue is impacting FairPoint's ability to serve the high-cost rural areas it is required to serve -- In many areas FairPoint's revenues are insufficient to maintain quality service at affordable levels, let alone complete the broadband deployment required to fulfill FairPoint's CAF II obligations.